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No. 83-180

IN THE

Supreme Court of the United States

OCTOBER TERM 1983

SOUTHERN PACIFIC TRANSPORTATION COMPANY,

Petitioner,

vs.

JAMES G. WATT, ET AL., and WALKER RIVER PAIUTE TRIBE OF NEVADA,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE ON BEHALF OF TRANSWESTERN PIPELINE COMPANY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI OF SOUTHERN PACIFIC TRANSPORTATION COMPANY

JAMES W. MCCARTNEY
Vinson & Elkins
First City Tower
Houston, Texas 77002
(713) 651-2324

Attorney for Amicus Curiae Transwestern Pipeline Company

Of Counsel:
KATHLEEN C. LAKE
Vinson & Elkins
First City Tower
Houston, Texas 77002

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BRIEF AMICUS CURIAE ON BEHALF OF TRANSWESTERN PIPELINE COMPANY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI OF SOUTHERN PACIFIC TRANSPORTATION COMPANY

Transwestern Pipeline Company (Transwestern) respectfully submits this amicus curiae brief in support of the Petition for Writ of Certiorari filed by the Southern Pacific Transportation Company (Southern Pacific).

All parties have consented to the filing of this brief, and copies of their consent letters have been filed with the Clerk.

INTEREST OF AMICUS CURIAE

Transwestern is a natural gas pipeline company regulated by the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. § 717 (1976). It holds several certificates of

public convenience and necessity issued by the FERC and its predecessor, the Federal Power Commission, authorizing the transportation, sale, and delivery of up to 750,000 Mcf of natural gas for resale and distribution in the Southern California area. Substantial portions of its facilities, including its 30-inch main line, cross lands of the Navajo Nation in New Mexico and Arizona. Its main-line facilities are an integral part of its pipeline system; it cannot serve Southern California without such facilities, and it cannot, as a practical matter, relocate the facilities around tribal lands. Whether it can condemn the necessary rights-of-way across tribal lands under the Natural Gas Act is a matter which has not been decided by the courts.[1]

The permit pursuant to which Transwestern constructed its pipeline system across Navajo lands was for an initial term of 20 years. It has now expired. Transwestern has applied for a new or renewal permit under the provisions of the 1904 pipeline right-of-way statute.[2] That application has been denied by the Acting Area Director of the Bureau of Indian Affairs on the ground that the tribal consent requirement of § 169.3(a) of the Secretary's regulations, 25 C.F.R. § 169.3 (1982), which the Ninth Circuit upholds, had not been satisfied. An appeal under 25 C.F.R. §§ 2.3, 2.19 (1982) is pending before the Board of Indian Appeals.

Transwestern's facilities are presently located on and across the lands of other Indian tribes. And, Transwestern contemplates that extension of its pipeline facilities will involve the need to cross tribal lands in the future. If tribal consent can be imposed as a condition to the construction or maintenance of its

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[1] The Natural Gas Act, 15 U.S.C. § 717 (1976), authorizes pipeline companies holding certificates of public convenience and necessity to acquire necessary rights-of-way through the exercise of powers of eminent domain.

[2] Act of Mar. 11, 1904, ch. 505, 33 Stat. 65 (codified as amended at 25 U.S.C. § 321 (1976) ("1904 Act")). The text of this statute is contained in the appendix attached to this brief.

pipeline facilities, Transwestern's ability to provide gas service to Southern California and its other customers will be directly affected and seriously impaired. Transwestern, thus, has a substantial interest in this case.

ARGUMENT

There are a number of acts of Congress authorizing the Secretary of Interior to grant rights-of-way for various purposes across Indian lands.[3] Some expressly impose consent requirements.[4] Some do not.[5] Some provide for permanent rights-of-way.[6] Some provide for permits of a limited duration.[7] The consent regulation, section 169.3(a), which the Ninth Circuit upholds as a valid exercise of authority under the 1899 Act,

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[3] In addition to the 1904 Act and 1899 Act involved in this case, Act of Mar. 2, 1899, ch. 374, 30 Stat. 990 (codified as amended at 25 U.S.C. §§ 312-318 (1976)), see also Act of Mar. 3, 1901, ch. 832, 31 Stat. 1083 (telephone and telegraph lines) (codified at 25 U.S.C. § 319 (1976)); Act of Mar. 4, 1911, ch. 238, 36 Stat. 1253 (power plant and communication facilities) (codified as amended at 43 U.S.C. § 961 (1976)); Act of Feb. 5, 1948, ch. 45, 62 Stat. 17 (general purpose) (codified as amended at 25 U.S.C. §§ 323-328 (1976)).

[4] The 1948 Act provides for consent only with respect to tribes organized under the Indian Reorganization Act of 1934. 25 U.S.C. § 324 (1976). Prior to passage of the 1899 Act, Congress enacted a number of individual railroad right-of-way acts that contained a consent requirement. *See, e.g.*, Act of Aug. 5, 1882, ch. 394, 22 Stat. 299; Act of May 30, 1888, ch. 336, 25 Stat. 160; Act of May 8, 1890, ch. 198, 26 Stat. 102; and Act of Feb. 18, 1895, ch. 95, 28 Stat. 665, *cited in United States* v. *Southern Pacific Transportation Co.*, 543 F.2d 676, 689 n. 20 (9th Cir. 1976).

[5] Neither the 1899 Act (railroads), the 1901 Act (telephone and telegraph lines), the 1904 Act (pipelines), nor the 1911 Act (power plant and communications facilities) contains a consent requirement.

[6] *See, e.g.*, the 1901 Act, 25 U.S.C. § 319 (1976); the 1899 Act, 25 U.S.C. § 312 (1976).

[7] The 1904 Act, for example, provides that a permit shall be issued for a term of 20 years and provides for the issuance of a renewal permit for an additional 20 years. *See also* 43 U.S.C. § 961 (1976) (50 years).

applies indiscriminately to all rights-of-way that the Secretary is authorized to grant across Indian lands. *See* 25 C.F.R. §§ 169.23-169.28 (1982). It has been and, if not invalidated, will be applied to other statutes.

Within the United States, there are millions of acres of Indian lands. Those lands must be and are crossed by pipelines, power lines, railroads, and other utility facilities. It is inconceivable that Congress intended to permit tribal lands to be barriers to interstate utility-type operations, operations providing public service to the citizens of the various states, even assuming it could constitutionally effect such a result. Indeed, by authorizing the Secretary to issue permits for railroads, pipelines, power lines, telephone and telegraph lines, and other facilities, the power of the tribes to exclude such operations is denied by necessary implication *See United States* v. *Wheeler*, 435 U.S. 313, 322-23 (1978); *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191, 206-08 (1978).

The tribal consent requirement of § 169.3(a) is not merely a "condition" — it is an absolute veto given to the Indians that effectively divests the Secretary of *any* authority to grant rights-of-way disapproved by the tribe. This result is inimical to the public interest and is manifestly contrary to the intent of Congress underlying the 1899 Act and the other statutory provisions that authorize specific grants of rights-of-way for utility and other public purposes, such as the 1904 pipeline act and the 1901 telephone and telegraph line act. *See, e.g.*, 25 U.S.C. §§ 319, 321 (1976). These specific acts and the 1948 general right-of-way act form a comprehensive plan designed by Congress to govern the issuance of rights-of-way across Indian lands. *See Plains Electric Generation & Transmission Cooperative* v. *Pueblo of Laguna*, 542 F.2d 1375, 1380-81 (10th Cir. 1976). The 1899 Act and the other specific right-of-way acts authorize the Secretary to grant rights-of-way for specific purposes, in contrast to the general purpose 1948 Act. Also in contrast to the consent provisions of the 1948 Act, neither the 1899 Act, the

1904 Act, nor the other specific utility purpose acts expressly requires tribal consent as a condition to the grant of such rights-of-way, although Congress has historically indicated an awareness of the distinction between requiring consent and not requiring consent. It did not include an express tribal consent requirement in the 1899 Act and the other specific acts because it did *not intend* the grant of rights-of-way for the public purposes denoted in such acts to be so conditioned. Rather, Congress recognized that the public has a substantial interest in rights-of-way corridors for railroads, oil and gas pipelines, and other utilities, and that this interest may clash with the particular economic interest of the tribe whose lands the railroad, pipeline or other utility must cross. The express language of the 1899 Act (as well as that of the 1904 and the other specific right-of-way acts) permits the Secretary to balance the interests of both the public and the Indians by authorizing the Secretary to grant rights-of-way across Indian lands, without tribal consent, on reasonable terms and conditions that provide for adequate compensation to the tribes and ensure prudent and safe use of the right-of-way.

The balancing of interests permitted under the 1899 Act, the 1904 Act, and the other specific acts is thwarted by the tribal consent requirement promulgated by the Secretary and upheld by the Court of Appeals. The veto given the Indians by the consent requirement holds the railroads, pipelines, and other utilities — as well as the consumers to whom services are provided — hostage to the compensation and other demands of the tribes however extreme and unrelated to the value of the land used or the actual damages incurred. Because a railroad, pipeline, or other utility may not be able unilaterally to abandon service it provides* and because of the essential character of the

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* For example, Section 7(b) of the Natural Gas Act, 15 U.S.C. § 717f(b) (1976), forbids abandonment of interstate natural gas service without prior federal authorization.

facilities, the Secretary's regulation could require the railroad, pipeline or other utility to pay whatever price the Indians may demand for their consent. Patently in most cases, certainly in Transwestern's case, the option of relocating facilities around tribal lands is not a practical alternative. In most instances, the company's power to condemn is uncertain. *Cf. Plains Electric Generation & Transmission Cooperative* v. *Pueblo of Laguna*, 542 F.2d 1375, 1380-81 (10th Cir. 1976).

Furthermore, the consent regulation violates the principle of law that a delegated, discretionary power cannot be further delegated. *Cf. Cudahy Packing Co.* v. *Holland*, 315 U.S. 357 (1942). The court below seeks to avoid application of this rule of law upon the erroneous conclusion that Indian tribes possess attributes of sovereignty with respect to this question and that redelegation is, therefore, sustainable. Clearly, however, a state could not block or unduly burden the construction and operation of interstate railroad or pipeline facilities, nor could the Secretary arbitrarily refuse to issue a permit for such facilities as authorized by Congress. Whether the Secretary can delegate to the Indian tribes the power to do so is a significant matter that this Court should decide in this case.

Even if the authority to redelegate be assumed, however, the Secretary's action here contravenes well-established law that a proper delegation of power must contain objective guidelines and standards for the exercise of the delegated authority. *Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935); *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 430-32 (1934). The consent regulation establishes no guidelines to be met by the tribal decision-makers, nor does it subject their decision, in any circumstances, to review by the Secretary. Consequently, the regulation divests the Secretary completely of any authority to approve grants of rights-of-way disapproved by the tribes — however arbitrary, capricious or unreasonable such disapproval may be. The Secretary, far from retaining final authority to approve

rights-of-way grants, is effectively bound by the action or inaction of the tribes.

The Secretary's regulation is thus clearly distinguishable from the delegation upheld in *United States* v. *Mazurie*, 419 U.S. 544 (1975), which authorized Indian tribes to regulate retail liquor outlets on the reservations. In *Mazurie* the Court permitted the delegated authority to be exercised *only* pursuant to a tribal ordinance approved by the Secretary of the Interior. *See also Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130 (1982) (tribal power to impose severance tax on mineral production pursuant to tax approved by the Secretary upheld); *Nance* v. *Environmental Protection Agency*, 645 F.2d 701 (9th Cir.) (delegation of redesignation of air quality standards within reservation pursuant to reclassification approved by the EPA administrator upheld), *cert. denied*, 454 U.S. 1081 (1981).

Unlike situations in which delegation of authority to Indians to regulate external affairs have been upheld, the tribal consent requirement in Section 169.3(a) is wholly without limitation. It does not state that tribal consent may not be unreasonably withheld. It does not require acceptance of reasonable offers of compensation. It does not provide standards for the establishment of reasonable compensation for right-of-way grants. No exceptions are provided. No qualifications are imposed. No right of appeal from the arbitrary withholding of consent or unreasonable demands for payment is provided or contemplated.

CONCLUSION

The questions presented in this case concern issues that are far broader than the private interests of the Southern Pacific and the interpretation of the 1899 Act. The public need for railroads, pipelines, power lines, and like utility-type operations is patent. Whether the Secretary can confer on the Indian tribes the authority to control the issuance of permits for such operations

across tribal lands without regard to the provisions of the particular acts of Congress involved is clearly a matter of sufficient importance to warrant review and decision by this Court.

The petition of Southern Pacific for writ of certiorari to the Ninth Circuit should be granted.

Respectfully submitted,

JAMES W. MCCARTNEY
Vinson & Elkins
First City Tower
Houston, Texas 77002
(713) 651-2324

Attorney for Amicus Curiae
Transwestern Pipeline Company

Of Counsel:

KATHLEEN C. LAKE
Vinson & Elkins
First City Tower
Houston, Texas 77002

APPENDIX

1899 Act

25 U.S.C. §§ 312-318 (1976)

§ 312 Rights-of-way for railway, telegraph, and telephone lines; town-site stations

A right of way for a railway, telegraph, and telephone line through any Indian reservation in any State or Territory, except Oklahoma, or through any lands reserved for an Indian agency or for other purposes in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, is granted to any railroad company organized under the laws of the United States, or of any State or Territory, which shall comply with the provisions of sections 312 to 318 of this title and such rules and regulations as may be prescribed thereunder: *Provided*, That no right of way shall be granted under said sections until the Secretary of the Interior is satisfied that the company applying has made said application in good faith and with intent and ability to construct said road, and in case objection to the granting of such right of way shall be made, said Secretary shall afford the parties so objecting a full opportunity to be heard: *Provided further*, That where a railroad has heretofore been constructed, or is in actual course of construction, no parallel right of way within ten miles on either side shall be granted by the Secretary of the Interior unless, in his opinion, public interest will be promoted thereby: *Provided, also*, That as a condition precedent to each and every grant of a right of way under authority of said sections, each and every railway company applying for such grant shall stipulate that it will construct and permanently maintain suitable passenger and freight stations for the convenience of each and every town site established by the Government along said right of way.

(Mar. 2, 1899, ch. 374, § 1, 30 Stat. 990; Feb. 28, 1902, ch. 134, § 23, 32 Stat. 50; June 25, 1910, ch. 431, § 16, 36 Stat. 859.)

§ 313. Width of right-of-way

Such right of way shall not exceed fifty feet in width on each side of the center line of the road, except where there are heavy cuts and fills, when it shall not exceed one hundred feet in width on each side of the road, and may include grounds adjacent thereto for station buildings, depots, machine shops, sidetracks, turn-outs, and water stations, not to exceed two hundred feet in width by a length of three thousand feet, and not more than one station to be located within any one continuous length of ten miles of road.

(Mar. 2, 1899, ch. 374, § 2, 30 Stat. 990; June 21, 1906, ch. 3504, 34 Stat. 330.)

§ 314. Survey; maps; compensation

The line of route of said road may be surveyed and located through and across any of said lands at any time, upon permission therefor being obtained from the Secretary of the Interior; but before the grant of such right of way shall become effective a map of the survey of the line or route of said road must be filed with and approved by the Secretary of the Interior, and the company must make payment to the Secretary of the Interior for the benefit of the tribe or nation, of full compensation for such right of way, including all damage to improvements and adjacent lands, which compensation shall be determined and paid under the direction of the Secretary of the Interior, in such manner as he may prescribe. Before any such railroad shall be constructed through any land, claim, or improvement, held by individual occupants or allottees in pursuant of any treaties or laws of the United States, compensation shall be made to such occupant or allottee for all property to be taken, or damage done, by reason of the construction of such railroad. In case of failure to make amicable settlement with any such occupant or

allottee such compensation shall be determined by the appraisement of three disinterested referees, to be appointed by the Secretary of the Interior, who, before entering upon the duties of their appointment, shall take and subscribe before competent authority an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to the Secretary of the Interior. If the referees cannot agree, then any two of them are authorized to make the award. Either party being dissatisfied with the finding of the referees shall have the right within sixty days after the making of the award and notice of the same, to appeal, if said land is situated in any State or Territory other than Oklahoma, to the United States district court for such State or Territory, where the case shall be tried de novo and the judgment for damages rendered by the court shall be final and conclusive.

When proceedings are commenced in court as aforesaid, the railroad company shall deposit the amount of the award made by the referees with the court to abide the judgment thereof, and then have the right to enter upon the property sought to be condemned and proceed with the construction of the railway. Each of the referees shall receive for his compensation the sum of $4 per day while engaged in the hearing of any case submitted to them under sections 312 to 318 of this title. Witnesses shall receive the fees usually allowed by courts within the district where such land is located. Costs, including compensation of the referees, shall be made part of the award or judgment, and be paid by such railroad company.

(Mar. 2, 1899, ch. 374, § 3, 30 Stat. 991; Feb. 28, 1902, ch. 134, § 23, 32 Stat. 50.)

§ 315. Time for completion of road; forfeiture

If any such company shall fail to construct and put in operation one-tenth of its entire line in one year, or to complete its road within three years after the approval of its map of location

by the Secretary of the Interior, the right of way granted shall be deemed forfeited and abandoned ipso facto as to that portion of the road not then constructed and in operation: *Provided*, That the Secretary may, when he deems proper, extend, for a period not exceeding two years, the time for the completion of any road for which right of way has been granted and a part of which shall have been built.

(Mar. 2, 1899, ch. 374, § 4, 30 Stat. 991.)

§ 316. Rights of several roads through canyons

The provisions of section 935 of title 43 relating to the rights of several railroads through any canyon, pass, or defile are extended and made applicable to rights of way granted under sections 312 to 318 of this title, and to railroad companies obtaining such rights of way.

(Mar. 2, 1899, ch. 374, § 6, 30 Stat. 992.)

§ 317. Regulations

The Secretary of the Interior shall make all needful rules and regulations, not inconsistent with sections 312 to 318 of this title, for the proper execution and carrying into effect of all the provisions of said sections.

(Mar. 2, 1899, ch. 374 § 7, 30 Stat. 992.)

§ 318. Amendment or repeal of sections

Congress reserves the right at any time to alter, amend, or repeal sections 312 to 318 of this title or any portion thereof.

(Mar. 2, 1899, ch. 374, § 8, 30 Stat. 992.)

1901 Act

25 U.S.C. § 319 (1976)

§ 319. Rights-of-way for telephone and telegraph lines

The Secretary of the Interior is authorized and empowered to grant a right of way, in the nature of an easement, for the construction, operation, and maintenance of telephone and telegraph lines and offices for general telephone and telegraph business through any Indian reservation, through any lands held

by an Indian tribe or nation in the former Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from the Secretary of the Interior, and the maps of definite location of the lines shall be subject to his approval. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval; and where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding $5 for each ten miles of line so constructed and maintained; and all such lines shall be constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority; and Congress expressly reserves the right to regulate the tolls or charges for the transmission of messages over any lines constructed under the provisions of this section: *Provided*, That incorporated cities and towns into or through which such telephone or telegraphic lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities.

(Mar. 3, 1901, ch. 832, § 3, 31 Stat. 1083.)

1904 Act

25 U.S.C. § 321 (1976)

§ 321. Rights-of-way for pipe lines

The Secretary of the Interior is authorized and empowered to grant a right-of-way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by an Indian tribe or nation in the former Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian Service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation upon the terms and conditions herein expressed. Before title to rights of way applied for hereunder shall vest, maps of definite location shall be filed with and approved by the Secretary of the Interior: *Provided*, That before such approval the Secretary of the Interior may, under such rules and regulations as he may prescribe, grant temporary permits revocable in his discretion for the construction of such lines: *Provided*, That the construction of lateral lines from the main pipe line establishing connection with oil and gas wells on the individual allotments of citizens may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location, when the consent of the allottee upon whose lands oil or gas wells may be located and of all other allottees through whose lands said lateral pipe lines may pass has been obtained by the pipe-line company: *Provided further*, That in case it is desired to run a pipe line under the line of any railroad, and satisfactory arrangements cannot be made with the railroad company, then the question shall be referred to the Secretary of the Interior, who shall prescribe the terms and conditions under which the pipe-line company shall be permitted to lay its lines under said railroad. The compensation to be paid the tribes in their tribal

capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval. And where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding $5 for each ten miles of line so constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessd against them by either State, Territorial, or municipal authority. And incorporated cities and towns into and through which such pipe lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities, and nothing herein shall authorize the use of such right of way except for pipe line, and then only so far as may be necessary for its construction, maintenance, and care: *Provided*, That the rights herein granted shall not extend beyond a period of twenty years: *Provided further*, That the Secretary of the Interior, at the expiration of said twenty years, may extend the right to maintain any pipe line constructed under this section for another period not to exceed twenty years from the expiration of the first right, upon such terms and conditions as he may deem proper. The right to alter, amend, or repeal this section is expressly reserved.

(Mar. 11, 1904, ch. 505, §§ 1, 2, 33 Stat. 65; Mar. 2, 1917, ch. 146, § 1, 39 Stat. 973.)

1948 Act

25 U.S.C. §§ 323-328 (1976)

§ 323. Rights-of-way for all purposes across any Indian lands

The Secretary of the Interior be, and he is empowered to grant rights-of-way for all purposes, subject to such conditions as he may prescribe, over and across any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations, or any lands now or hereafter owned, subject to restrictions against alienation, by individual Indians or Indian tribes, communities, bands, or nations, including the lands belonging to the Pueblo Indians in New Mexico, and any other lands heretofore or hereafter acquired or set aside for the use and benefit of the Indians.

(Feb. 5, 1948, ch. 45, § 1, 62 Stat. 17.)

§ 324. Consent of certain tribes; consent of individual Indians

No grant of a right-of-way over and across any lands belonging to a tribe organized under sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478 and 479 of this title; sections 396 and 473a of this title; and subchapter VIII of chapter 14 of this title, shall be made without the consent of the proper tribal officials. Rights-of-way over and across lands of individual Indians may be granted without the consent of the individual Indian owners if (1) the land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant; (2) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant; (3) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary of the Interior finds that the grant will cause no substantial injury to the land or any owner thereof; or (4) the owners of interests in the land are so numerous that the Secretary finds it would be impracticable to

obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

(Feb. 5, 1948, ch. 45, § 2, 62 Stat. 18.)

§ 325. Payment and disposition of compensation

No grant of a right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just. The compensation received on behalf of the Indian owners shall be disposed of under rules and regulations to be prescribed by the Secretary of the Interior.

(Feb. 5, 1948, ch. 45, § 3, 62 Stat. 18.)

§ 326. Laws unaffected

Sections 323 to 328 of this title shall not in any manner amend or repeal the provisions of the Federal Water Power Act of June 10, 1920 (41 Stat. 1063), as amended by the Act of August 26, 1935 (49 Stat. 838) [16 U.S.C. 791a et seq.], nor shall any existing statutory authority empowering the Secretary of the Interior to grant rights-of-way over Indian lands be repealed.

(Feb. 5, 1948, ch. 45, § 4, 62 Stat. 18.)

§ 327. Application for grant by department or agency

Rights-of-way for the use of the United States may be granted under sections 323 to 328 of this title upon application by the department or agency having jurisdiction over the activity for which the right-of-way is to be used.

(Feb. 5, 1948, ch. 45, § 5, 62 Stat. 18.)

§ 328. Rules and regulations

The Secretary of the Interior is authorized to prescribe any necessary regulations for the purpose of administering the provisions of sections 323 to 328 of this title.

(Feb. 5, 1948, ch. 45, § 6, 62 Stat. 18.)

1911 Act

43 U.S.C. § 961 (1976)

§ 961 Rights-of-way through public lands, Indian, and other reservations for power and communications facilities

The head of the department having jurisdiction over the lands be, and he is, authorized and empowered, under general regulations to be fixed by him, to grant an easement for rights-of-way, for a period not exceeding fifty years from the date of the issuance of such grant, over, across, and upon the public lands and reservations of the United States for electrical poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, to the extent of two hundred feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, to any citizen, association, or corporation of the United States, where it is intended by such to exercise the right-of-way herein granted for any one or more of the purposes herein named: *Provided*, That such right-of-way shall be allowed within or through any Indian or any other reservation only upon the approval of the chief officer of the department under whose supervision or control such reservation falls, and upon a finding by him that the same is not incompatible with the public interest: *Provided further*, That all or any part of such right-of-way may be forfeited and annulled by declaration of the head of the department having jurisdiction over the lands for nonuse for a period of two years or for abandonment.

Any citizen, association, or corporation of the United States to whom there was issued, prior to March 4, 1911, a permit for any of the purposes specified herein under any existing law may

obtain the benefit of this section upon the same terms and conditions as shall be required of citizens, associations, or corporations thereafter making application under the provisions of this section.

(Mar. 4, 1911, ch. 238, 36 Stat. 1253; May 27, 1952, ch. 338, 66 Stat. 95.)